IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 3805 of 2007()

CRA.552/2004 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR
CC.332/2003 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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REVN. PETITIONER: DEFACTO COMPLAINANT

M.BALAGOPAL, AGED 64,S/O.M.P.MADHAVAN
SREEYAS,DR.NO. 44/1323, KANNAPURAM
POST CHETTUPUZHA, THRISSUR-680 621.

BY ADV. SRI.VAKKOM N.VIJAYAN
SRI.P.ANIYAN
SRI.A.S.SACHIN

RESPONDENTS: APPELLANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. MAHENDRAN, S/O. MADHUIVANAN THILLALY
MARAVOOR, THIRUVAYAL TALUK
THANCHAVOOR, NOW RESIDING IN NO.8
KULATHUMED, MOOLAKKULAM,
PUZHAVARKARAI POST, PONDICHERRY.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 3805 of 2007

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Dated: 25-10-2007

ORDER

The revision petitioner is the de facto complainant in Crime No. 189 of 2003 of Thrissur Town West Police Station for offences punishable under Sectiuons 457, 380 and 461 read with Sec. 34 I.P.C.

2. The case of the prosecution is that some time in the night of 7-6-2003 the accused broke open the door of the house of the revision petitioner at Pullazhi and committed theft of a thali chain weighing 60 gms and cash worth Rs. 7100/- which were kept inside the table of his bedroom. According to the revision petitioner it was the thali chain of his deceased wife. The thali chain which was produced as MO1 was recovered pursuant to a confessional statement made by the accused and was produced before Court. Pending trial, the revision petitioner had filed an application under Sec. 451 Cr.P.C. for interim custody of the gold chain and the same was entrusted with him on interim custody on kychit with a direction to produce the same at the time of trial. Accordingly, it was produced at the time of trial and was identified by the revision petitioner . As per judgment dated 07-09-2004 in C.C. 332 of 2003 before the Chief Judl.

Magistrate, the case ended in conviction and the thali chain was directed to be returned to P.W.1 after the expiry of the appeal period. The convicted accused preferred an appeal before the Sessions court, Thrissur as Crl. Appeal 552 of 2004. As per judgment dated 4-09-2007 the Addl. Sessions Judge (Fast Track Court No. II Adhoc), Thrissur allowed the appeal filed by the accused and acquitted him mainly on the ground that the recovery was not properly proved. None the less, the fact remains that the accused did not put in any claim over MO1 which was proved to be the thali chain belonging to the deceased wife of the revision petitioner. Strangely enough, the lower appellate court on the wrong premise that the thali chain was in the custody of the revision petitioner pursuant to the order for interim custody under Sec. 451 Cr.P.C. directed the same to be produced before court and to be sold in auction and to deposit the sale proceeds in the treasury. It was observed that the appellant / accused had not preferred any claim and nobody else had come forward for claiming the thali chain. The above observation was on a factually wrong assumption since the revision petitioner had come forward with a claim and he was given interim custody of the thali chain. Even if the case ends in acquittal, the property can be returned to the person who is prima facie entitled to the custody of the

same and in the absence of any rival claim including that of the accused the thali chain ought to have been returned to the revision petitioner as was rightly done by the trial Court. ***(Vide Narayanan Nair v. State of Kerala - 1963 K.L.T. 229)***

3. The direction issued by the lower appellate court is erroneous and is accordingly set aside and MO1 shall be released to the revision petitioner/de facto complainant.

This Revision is allowed as above.

V. RAMKUMAR,
(JUDGE)

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